

Claimant alleges accidental injury on or about May 5, 2000, while working for respondent as a roofer. As noted in the Order of the Administrative Law Judge, claimant is an extremely poor historian. It is unclear from the record whether claimant's alleged injury occurred on or about May 5, 2000, or on or about May 12, 2000. What is clear, however, is that claimant, when he discussed this matter with respondent representative Danny Burkett, related it to his having slept on the couch the night before. Claimant did not mention any type of work-related injury on the alleged date of accident or at any time during the two days after the alleged date of accident, while he was still working for respondent. Claimant left his employment with respondent on approximately May 16, 2000, but could not verify any medical treatment until May 25, 2000. When claimant entered Susan B. Allen Memorial Hospital in El Dorado, Kansas, he was tested for numerous conditions, including kidney and bladder infections and hepatitis C virus. Claimant did undergo an MRI on May 25, 2000, which displayed mild height and signal loss at L5-S1 with no evidence of direct nerve pressure, and mild loss of height at L4-5 with a moderate loss of signal. A second MRI on June 14, 2000, showed a marked change in claimant's condition. The second MRI indicated an abnormal signal at L3 and L2, as well

as hypointense changes at T1 and hyperintense changes at T2, with a decreased signal at L2-3. The moderate signal interruptions at L4-5 remained constant, but the mild protrusion at L5-S1 was read as moderate.

Claimant's treatment was later transferred to Via Christi Regional Medical Center in Wichita, Kansas, where he was diagnosed with hepatitis C, anemia, intermittent hematuria and alcoholism. The Via Christi reports indicate claimant's back complaints were probably secondary to hemophilus influenza pneumonia, with his chronic back pain being secondary to that, and a history of hemophilus influenza bacteremia.

The Appeals Board finds it significant that claimant's complaints began not while working but while he was at home. When claimant was initially asked about his back problems, he told respondent it occurred as a result of his sleeping on a couch. The first time claimant alleged a work-related connection to his back complaints was after being admitted to Susan B. Allen Memorial Hospital in El Dorado on May 25, 2000.

In workers' compensation litigation, it is claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence. The Appeals Board finds claimant has failed to prove that he suffered accidental injury arising out of and in the course of his employment with respondent. Claimant's inconsistent history, as well as the reports of the various health care providers, supports a finding that claimant's back complaints are related to a chronic problem claimant has had for some time or, in the alternative, related to hemophilus influenza bacteremia infections, or kidney or bladder problems.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Jon L. Frobish dated September 13, 2000, denying claimant benefits for having failed to prove accidental injury arising out of and in the course of his employment, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of November 2000.

BOARD MEMBER

c: Randy S. Stalcup, Wichita, KS
William L. Townsley, III, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director